Koperasi Serbaguna Taiping Barat Bhd v Lim Joo Thong

HIGH COURT (TAIPING) — ORIGINATING SUMMONS NO 24-165 OF 1997(T)
ZULKEFLI J
16 JULY 1998

Civil Procedure *— Contempt of court — Letter by defendant and its solicitor to court — Whether letters were written with regard to something occurring in the face of the court — Court issued show cause letter to alleged contemnors — Whether court should accept explanation provided by contemnors — Matters to be considered — Sentencing, principles applicable*

This was a contempt proceeding instituted by the court on its own motion against the defendant and his solicitor. The defendant's solicitor had written letters dated 16 December 1997 to the deputy registrar of the High Court and to the chief registrar of the Federal Court. The defendant had written an undated letter to the Chief Justice of the Federal Court. The court had come to a finding that the contents of the three letters when read together contained elements which constituted an act of contempt of the court and had issued show cause letters dated 17 March 1998 to the defendant and his solicitor as to why they should not be cited for contempt of court for writing the three letters. At the outset of the contempt proceeding, the court informed the alleged contemnors that the court was proceeding with the contempt proceeding in a summary manner on the basis that the court found prima facie the act and conduct of the alleged contemnors based on the contents of the letters constitute contempt in the face of the court. However, counsel for the contemnors sought the court's indulgence to make a submission on the point of procedure to be adopted in this contempt proceeding. It was submitted that in so far as the letters were concerned, they were written not with regard to something occurring in the face of the court.

Held, finding the defendants guilty of contempt:

(1) The act and conduct of the alleged contemnors based on the letters written by them in respect of matters arising from this case constituted a contempt in the face of the court. It was a contempt in the cognizance of the court as such acts and conduct took place during a pending proceeding and when the case had not been finally disposed of by the court. Hence, it was contempt which the court could punish on its own motion (see p pp54I–55A).

(2) The circumstances and categories of facts which may arise and which may constitute contempt in the face of the court in a particular case are never closed. Contempt in the face of the court may arise from any act, any slander, any contemptuous utterance and any act of disobedience to a court order. Any of these acts in varying degrees that affects the administration of justice or may impede the fair trial of subjudice matters, whether for the time

A being pending in any court, can be deemed to be contempt in the face of the court. Any comment or views expressed on a pending legal proceeding as in the present case which purports to prejudge the issues which are to be tried by the court is intrinsically objectionable as being an usurpation of the proper function of the court. This may be punished or restrained as contempt
B irrespective of the effect or likely effect on the particular proceeding in question. In the present case, the defendant's solicitor in their letter to the Chief Registrar of the High Court had not only prejudged the issues to be tried by the court, but had thought it fit to direct the deputy registrar to fix a new auction date as soon as possible defying the order of stay made by this
C court (see p 55B–C).

(3) To constitute contempt in the face of the court, it appears to be unnecessary that the act of contempt should take place wholly or in part in a court room itself nor does it seem to be necessary that all the circumstances of contempt should be within the personal
D knowledge of the judicial officer dealing with the contempt (see p 55E).

(4) The court had the jurisdiction to proceed to institute the contempt proceeding against the alleged contemnors based on the show cause letter sent out to the alleged contemnors. The court
E had the jurisdiction by virtue of the fact that the show cause letter had instituted three charges and that the elements of contempt were fully set out and the court had decided that both the defendant and his solicitor were to show cause. The alleged contemnors therefore should give explanations to the court and that would tantamount to show cause (see p 56E–G).

F

(5) In a contempt proceeding initiated by the court on its own motion and to determine at the end of the day whether the explanation given ought to be accepted or rejected, the court must and can question the alleged contemnors in order to satisfy itself whether the explanation was made in good faith or malice and to
G determine whether to accept or to reject the explanation given (see p 57F–G).

(6) Having heard and studied the explanation given by the defendant and his solicitor, the court found that both the alleged contemnors had failed to give a sufficient explanation to the said show cause
H letter. Therefore, the court found both the defendant and his solicitor to be guilty of contempt of the court (see p 60F–G).

(7) The question of mens rea or intention in a contempt proceeding is not a relevant consideration. The test was whether the matter complained of had the tendency or was calculated to interfere with the due administration of justice, not whether the perpetrator
I had intended that result. Contempt in the face of the court is an offence of strict liability in which intention on the part of the contemnor is irrelevant (see pp 62F–63A).

(8) On the sentence to be meted out, the court had to take into consideration of the fact that contempt in the face of the court that had been committed in this case was a serious offence. However, after having heard the plea in mitigation made by counsels of the respective contemnors and having considered the facts and the circumstances under which the letters were written together with the willingness of the contemnors to unreservedly tender their apologies to this honourable court, the court found that it was not inappropriate for the court to pass a sentence of merely admonishing and discharging both the contemnors (see pp 63E–64A).

[Bahasa Malaysia summary

Ini merupakan suatu prosiding penghinaan yang dimulakan oleh mahkamah di atas usul sendiri terhadap defendan dan peguamcara beliau. Peguamcara defendan telah menulis surat-surat bertarikh 16 Disember 1997 kepada timbalan pendaftar Mahkamah Tinggi dan juga kepada ketua pendaftar Mahkamah Persekutuan. Defendan telah menulis sepucuk surat yang tidak bertarikh kepada Ketua Hakim Mahkamah Persekutuan. Mahkamah telah mendapati bahawa kandungan-kandungan ketiga-tiga surat-surat tersebut mengandungi elemen yang merupakan suatu perbuatan penghinaan mahkamah dan telah mengeluarkan surat-surat tunjuk sebab bertarikh 17 Mac 1998 kepada defendan dan peguamcara beliau mengapa mereka tidak sepatutnya disaman untuk penghinaan mahkamah kerana menulis ketiga-tiga surat-surat tersebut. Pada permulaan prosiding penghinaan, mahkamah memberitahu penghina-penghina yang dikatakan tersebut bahawa mahkamah akan meneruskan dengan prosiding penghinaan secara terus berdasarkan bahawa mahkamah mendapati prima facie perbuatan dan kelakuan tersebut oleh penghina-penghina yang dikatakan tersebut berdasarkan kandungan-kandungan surat-surat tersebut merupakan penghinaan terhadap mahkamah. Walau bagaimanapun, peguamcara bagi penghina-penghina tersebut meminta mahkamah membenarkan permintaan untuk membuat suatu hujahan berkenaan dengan suatu perkara prosedur yang akan terpakai di dalam prosiding penghinaan ini. Adalah dihujahkan bahawa surat-surat tersebut berkenaan adalah tidak berkenaan dengan sesuatu yang berlaku di hadapan mahkamah.

Diputuskan, mendapati defendan-defendan tersebut bersalah untuk penghinaan:

(1) Perbuatan dan kelakuan penghina-penghina berdasarkan surat-surat tersebut yang ditulis oleh mereka berkenaan dengan perkara-perkara yang timbul daripada kes ini merupakan suatu penghinaan mahkamah. Ia adalah suatu penghinaan yang diambil tahu oleh mahkamah memandangkan perbuatan dan kelakuan sedemikian berlaku semasa prosiding tersebut ditangguhkan dan apabila kes tersebut masih belum diselesaikan secara muktamad oleh mahkamah. Maka, ia merupakan penghinaan yang mana

mahkamah boleh menghukum di atas usul sendiri (lihat ms 54I–55A).

(2) Keadaan-keadaan dan kategori-kategori fakta-fakta yang mungkin timbul dan mungkin merupakan penghinaan mahkamah dalam sesuatu kes yang tertentu adalah tidak terhad. Penghinaan mahkamah mungkin timbul daripada sebarang perbuatan, sebarang slander, sebarang pernyataan yang menghina dan sebarang perbuatan yang tidak mematuhi perintah sesebuah mahkamah. Mana-mana perbuatan-perbuatan ini dalam darjah-darjah yang berbeza-beza yang menjejaskan pentadbiran keadilan atau mungkin menghalang perbicaraan secara adil perkara-perkara subjudis, sama ada pada masa kini adalah ditangguhkan di mana-mana mahkamah, boleh disifatkan sebagai penghinaan mahkamah. Sebarang komen atau pandangan-pandangan yang dilahirkan berkenaan suatu prosiding undang-undang yang ditangguhkan seperti mana di dalam kes ini yang bertujuan untuk membuat pengadilan terlebih dahulu berkenaan isu-isu yang akan dibicarakan oleh mahkamah adalah boleh dibantah secara intrinsik kerana merupakan suatu rampasan fungsi sebenar yang terletak pada mahkamah. Ini mungkin dihukum atau dihalang sebagai penghinaan tidak mengira kesan tersebut atau kesan yang mungkin sekali terhadap prosiding tertentu dalam persoalan. Di dalam kes ini, peguamcara defendan di dalam surat mereka kepada ketua pendaftar Mahkamah Tinggi bukan sahaja membuat pengadilan terlebih dahulu isu-isu yang akan dibicarakan oleh mahkamah tetapi berpendapat ia berpatutan untuk mengarahkan timbalan pendaftar untuk menetapkan suatu tarikh lelongan secepat mungkin, mengingkari perintah penggantungan yang dibuat oleh mahkamah ini (lihat ms 55B–C).

(3) Untuk terjumlah kepada penghinaan di hadapan mahkamah, nampaknya tidak perlu untuk perbuatan menghina tersebut berlaku secara keseluruhannya atau sebahagiannya di dalam sebuah bilik mahkamah dan ia juga nampaknya tidak perlu bahawa semua keadaan-keadaan penghinaan seharusnya berada di dalam pengetahuan peribadi pegawai kehakiman yang mengendalikan penghinaan tersebut (lihat ms 55E).

(4) Mahkamah mempunyai bidang kuasa untuk meneruskan dengan memulakan prosiding penghinaan terhadap penghina-penghina yang dikatakan berdasarkan surat tunjuk sebab tersebut yang telah dihantar kepada penghina-penghina tersebut. Mahkamah mempunyai bidang kuasa memandangkan surat tunjuk sebab tersebut telah memulakan tiga tuduhan-tuduhan dan bahawa elemen-elemen penghinaan tersebut adalah dinyatakan secara penuhnya dan mahkamah tersebut mendapati bahawa defendan dan peguamcara beliau adalah dikehendaki menunjuk sebab. Penghina-penghina yang dikatakan tersebut maka seharusnya memberi penjelasan-penjelasan kepada mahkamah dan itu adalah sama seperti suatu tunjuk sebab (lihat ms 56E–G).

(5) Di dalam suatu prosiding penghinaan yang dimulakan oleh mahkamah di atas usul sendirinya dan untuk menentukan pada akhir harinya sama ada penjelasan yang diberi sepatutnya diterima atau ditolak, mahkamah mesti dan boleh menyoal penghina-penghina yang dikatakan tersebut untuk menyakinkan mahkamah sendiri sama ada penjelasan tersebut adalah dibuat secara suci hati atau niat jahat dan untuk menentukan sama ada untuk menerima atau menolak penjelasan yang diberikan tersebut (lihat ms 57F–G).

(6) Setelah mendengar dan meneliti penjelasan tersebut yang diberi oleh defendan dan peguam beliau, mahkamah mendapati bahawa kedua-dua penghina-penghina yang dikatakan tersebut telah gagal untuk memberi suatu penjelasan yang mencukupi kepada surat tunjuk sebab tersebut. Maka, mahkamah mendapati kedua-dua defendan dan peguamcara beliau bersalah di atas penghinaan mahkamah tersebut (lihat ms 60F–G).

(7) Persoalan mens rea atau niat di dalam suatu prosiding penghinaan adalah bukannya suatu pertimbangan yang relevan. Ujian yang terpakai adalah sama ada perkara yang diadukan tersebut mempunyai kecenderungan atau dikira akan campur tangan dengan pentadbiran keadilan yang sewajarnya, dan bukannya sama ada pelaku telah bertujuan untuk memperolehi kesan tersebut. Penghinaan mahkamah merupakan suatu kesalahan liabiliti ketat dalam mana niat pada pihak penghina adalah tidak relevan (lihat ms 62H–63A).

(8) Berkenaan dengan hukuman untuk dijatuhkan, mahkamah perlu mengambil kira pertimbangan fakta bahawa penghinaan mahkamah yang telah dilakukan di dalam kes ini adalah suatu kesalahan yang serius. Walau bagaimanapun, setelah mendengar rayuan meringankan hukuman yang dibuat oleh peguam-peguam bagi penghina-penghina masing-masing dan setelah mempertimbangkan fakta-fakta dan keadaan-keadaan di bawah mana surat-surat tersebut telah ditulis bersama-sama dengan kesanggupan penghina-penghina untuk secara sepenuhnya meminta maaf kepada mahkamah yang mulia ini, mahkamah mendapati bahawa adalah berpatutan untuk mahkamah menjatuhkan suatu hukuman untuk hanya menegur dan melepaskan kedua-dua penghina tersebut (lihat ms 63E–64A).]

Notes

For cases on contempt of court generally, see 2(1) *Mallal Digest* (4th Ed, 1998 Reissue) paras 1083–1161.

Cases referred to

Attorney General, Malaysia v Manjeet Singh Dhillon [1991] MLJ 167 (refd)

Chandra Sri Ram v Murray Hiebert [1997] 3 MLJ 240 (refd)

A *Joseph Orakwue Izuora v R* [1953] AC 327 (refd)
PP v Seeralan [1985] 2 MLJ 30 (refd)
R v Davison (1821) 4B & Ald 329 (refd)

Legislation referred to

B Civil Law Act 1956 ss 3, 5
Courts of Judicature Act 1964 s 13
Federal Constitution art 126

Raja Aziz Addruze (*Raja Aziz Addruze*) for the first contemnor.
Zainur Zakaria (*Zainur Zakaria*) for the second contemnor.
C *A Iruthaya Raj* (*Raj Selva & Co*) and *Selvanathan* (*Kean Chye* and *Sivalingam*) holding watching brief for the Bar Council and the Perak Committee.
Gurbachan Singh (*Bachan & Kartar*) amicus curiae.

Cur Adv Vult

D **Zulkefli J**: This is a contempt proceeding instituted by this court on its own motion against the defendant Lim Joo Thong and his solicitors Messrs WY Chan & Roy. It is necessary at the outset to set out the principal events of relevance prior to the institution of this contempt proceeding against the alleged contemnors as follows:

E (1) In Originating Summons No 24–262–93 filed before this court the defendant Lim Joo Thong who is a plaintiff in that case obtained judgment dated 3 June 1994 against the plaintiff Koperasi Serbaguna Taiping Barat Bhd as a defendant in that case for RM2,372,256.45 entered in terms of an arbitration award under s 27 of the Arbitration Act 1952.

F (2) The defendant Lim Joo Thong proceeded with first execution proceedings on the said judgment dated 3 June 1994 but by an order dated 5 December 1994 made by this court upon an application made by the plaintiff the execution proceeding was stayed pending the plaintiff's appeal against the said judgment dated 3 June 1994.

G (3) On 26 June 1995 the Federal Court dismissed the plaintiff's application to file the record of appeal out of time and also dismissed the appeal against the said judgment dated 3 June 1994.

(4) The defendant Lim Joo Thong then completed the first execution proceedings for part of the judgment sum and proceeded with second
H execution proceedings for the balance. The auction of the plaintiff's land was fixed on 18 December 1995 but on an application made by the plaintiff this court stayed the auction pending the hearing of an alleged counterclaim by the plaintiff against the defendant Lim Joo Thong on the ground that the said counterclaim was not heard by the arbitrator under the said arbitration award given to the defendant.

I (5) The defendant Lim Joo Thong appealed to the Court of Appeal against the stay order made by this court and on 27 March 1997 the appeal was allowed with the consequence that the second execution proceedings on the said judgment dated 3 June 1994 could continue.

The plaintiff has filed an application for leave to appeal to the Federal Court of the Court of Appeal decision dated 27 March 1997. A

(6) Another auction date was fixed by the court for the sale of the plaintiff's land on 9 December 1997.

(7) On the same auction date fixed for the sale of the plaintiff's land on 9 December 1997 the plaintiff filed an action under the present Originating Summons No 24–165–97 on a certificate of urgency for various declarations together with an ex parte application by way of summons in chambers in encl 4 for a stay of the auction. B

(8) In view of the ex parte application made by the plaintiff this court directed the deputy registrar of the High Court of Taiping to put on hold the auction fixed at 10 am on 9 December 1997 so that the ex parte application of the plaintiff could be heard first by this court. C

(9) This court through the deputy registrar directed the counsel acting for the plaintiff to serve all the cause papers under the present originating summons and the ex parte application on the solicitors for the defendant Lim Joo Thong. This court also directed that the ex parte application of the plaintiff for a stay of the auction proceedings be heard at 2.15 pm on the same date on 9 December 1997. D

(10) At the hearing of the ex parte application on 9 December 1997 and 10 December 1997 En Gurbachan Singh from Messrs Bachan & Kartar appeared for the plaintiff. At the invitation of this court En Faizul Hilmy from Messrs WY Chan & Roy appeared for the defendant Lim Joo Thong. Having heard the submission of En Gurbachan Singh for the plaintiff and En Faizul Hilmy for the defendant the court on 10 December 1997 allowed the ex parte application of the plaintiff in encl (4) in terms of prayer (a) only whereby the court made an order staying the auction proceeding on 9 December 1997 for the sale of certain scheduled lands until the disposal of the hearing of the plaintiff action under the present originating summons filed. The court also made an order for prayers (b), (c) and (d) of the plaintiff's application in encl 4 to be decided at the trial proper of the plaintiff action on the various declarations sought for under the present originating summons. The court further made an order that the said prayer (a) be granted to the plaintiff on the basis of an undertaking as to damages to be given to the defendant by the plaintiff. E F G

(11) The court also made an order that the ex parte order granted in terms of prayer (a) in encl (4) be heard inter partes within 14 days from 10 December 1997 and fixed the hearing dated on 20 December 1997. However at the request of the learned counsel for the defendant and with no objection from counsel for the plaintiff a longer date for hearing of the inter partes application was requested and the court fixed on 17 February 1998 for the hearing. H

(12) In arriving at the decision to allow the ex parte order in terms of the said prayer (a) the court found that based on the affidavit filed by the plaintiff in support of its application in encl 4 the plaintiff has disclosed prima facie triable issues. The plaintiff through the affidavit I

of its secretary Wan Ahmad Bin Sharif in encl (3) in support of the plaintiff's application in encl 4, inter alia, averred the following relevant facts:

(a) By way of Civil Suit No 22–23–1991 filed on 5 February 1991 in the High Court of Ipoh the defendant claimed from the plaintiff inter alia, a sum of RM1,600,558.37 allegedly owed by the plaintiff to the defendant under an agreement dated 29 February 1984.

(b) By way of a defence and counterclaim filed on 17 August 1991 the plaintiff, inter alia, counterclaimed against the defendant for a sum of RM1,660,042.30 under the said Civil Suit No 22–23–1991.

(c) Based on cl 34 of the agreement dated 29 February 1984 entered between the plaintiff and the defendant the High Court of Ipoh under an order dated 6 August 1992 had stayed the proceedings relating to the action filed under the Civil Suit No22–23–1991 pending the reference of the dispute between the plaintiff and the defendant to the arbitrator for his decision.

(d) Arising from the order of the High Court of Ipoh dated 6 August 1992 Messrs WY Chan & Roy, solicitors for the defendant by way of a letter dated 16 November 1992 wrote to the Pertubuhan Akitek Malaysia ('PAM') to appoint an arbitrator to arbitrate the dispute between the plaintiff and the defendant under the said Civil Suit No 22–23–1991.

(e) Following the said letter dated 16 November 1992 from Messrs WY Chan & Roy, PAM through its letter dated 18 December 1992 purportedly written by one Jimmy CS Lim as President of PAM proposed Mr WY Chin to be appointed as the arbitrator to decide on the dispute between the plaintiff and the defendant.

(f) The plaintiff maintained that at all time the plaintiff did not agree and/or authorize PAM to appoint Mr WY Chin as the arbitrator.

(g) Notwithstanding the fact that the plaintiff did not agree and/or authorize PAM to appoint Mr WY Chin as the arbitrator, Mr WY Chin acting as the arbitrator proceeded with the hearing of the dispute between the plaintiff and the defendant ex parte in the absence of the plaintiff and their counsel and on 28 October 1993 allowed the claim of the defendant for a sum of RM2,373,256.45 with interests and costs.

(h) By way of originating summons No24–262–1993 filed by the defendant the High Court of Taiping on 3 June 1994 allowed the application of the defendant for the enforcement of the award made by Mr WY Chin the arbitrator who decided the dispute between the plaintiff and the defendant.

(i) Subsequent to the order of the court enforcing the arbitration award made on 3 June 1994 on the application of the defendant

the lands belonging to the plaintiff were sold by public auction on 11 September 1995 for a sum of RM1,950,000.

(j) The plaintiff now claimed that they have been advised by their solicitors and verily believed that the order of the arbitrator Mr WY Chin dated 28 October 1993 is null and void on the following grounds:

(i) By way of a letter dated 27 December 1993 PAM informed the plaintiff and the defendant that the appointment of Mr WY Chin as the arbitrator was null and void because the officer Mr Jimmy CS Lim allegedly to have appointed Mr WY Chin as the arbitrator was not then the President of PAM according to the law and had no authority to appoint an arbitrator. PAM in this letter had advised and proposed to both the plaintiff and the defendant to give their approval in writing as regards the appointment of Mr WY Chin as the arbitrator and further to contact PAM on the same matter.

(ii) However by way of a letter dated 19 January 1994 Messrs WY Chan & Roy as the solicitors for the defendant only wrote in objecting and demanding PAM to withdraw its letter dated 27 December 1993.

(iii) The plaintiff claimed that on the persistent demand for the refund of moneys deposited with PAM for the purpose of the arbitration made by Messrs WY Chan & Roy as solicitors for the defendant and on the ground that the appointment of the arbitrator was null and void, PAM in its letter dated 7 April 1994 refunded the said deposit moneys and stated that it deny any responsibility on any matter arising out of this matter.

(k) The plaintiff contended that after receiving the said PAM's letter dated 27 December 1993 which stated that the appointment of Mr WY Chin as arbitrator was null and void both the plaintiff and the defendant did not proceed to give any consent in writing relating to the appointment of Mr WY Chin as arbitrator.

(l) The plaintiff contended by virtue of the fact that the appointment of the arbitrator was null and void it follows that all proceedings based on the decision of the arbitrator made on 28 October 1993 therefore now become null and void on the ground that the arbitrator who sat to arbitrate the dispute between the plaintiff and the defendant did not have any authority to do so.

(13) The defendant through his solicitors Messrs WY Chan & Roy filed an application by way of summons in chamber in encl (11) on 21 January 1998 to set aside the said ex parte order dated 10 December 1997 and also to strike out the plaintiff action under O 18 r 19 of the Rules of High Court 1980 and under the inherent jurisdiction of the court.

(14) At the hearing of the inter partes application of the plaintiff in encl 4 and of the defendant application in encl (11) on 17 February 1998 this

court brought to the attention of En Gurbachan Singh, counsel for the plaintiff and En Faizul Hilmy, counsel for the defendant two letters written by Messrs WY Chan & Roy, solicitors for the defendant both dated 16 December 1997 and an undated letter by the defendant in respect of matters arising from the present case that is being heard.

For completeness the said three letters are reproduced in full as follows:

(a) A letter dated 16 December 1997 from Messrs WY Chan & Roy to deputy registrar/assistant registrar of the High Court Taiping.

16 Disember 1997

Timbalan Pendaftar/Penolong Kanan Pendaftar
Mahkamah Tinggi
34000 Taiping

Tuan

Saman Pemula No 24-262-1993 (T)
Lim Joo Thong v Koperasi Serbaguna Taiping Barat Bhd

Kami merujuk kepada lelongan awam dibawah Saman Pemula tersebut yang ditetapkan pada pukul 10.00 pagi 9 Disember 1997 dan yang telah ditangguhkan pelaksanaannya di atas arahan Yang Arif Hakim.

Seperti yang tuan sedia maklum, arahan tersebut adalah kerana Yang Arif Hakim ingin mendengar suatu permohonan ex parte di bawah SP No 24-165-1997 yang difailkan oleh defendan sebagai plaintif pada pagi 9 Disember 1997 antara lain memohon penggantungan suatu prosiding lelongan awam pada 9 Disember 1997. Suatu perintah seperti yang dipohon telah diberi pada 10 Disember 1997.

Kami percaya bahawa di dalam menangguhkan lelongan awam dibawah SP 24-262-93 (T) tersebut tuan telah menganggap bahawa permohonan ex parte dan perintah yang diberi tersebut telah memberi kesan yang membawa kepada penggantungan lelongan awam di bawah SP 24-262-1993 (T) yang diambil bagi menyelesaikan penghakiman bertarikh 3 Jun 1994.

Walaubagaimanapun memandangkan tiada perintah yang dibuat di bawah SP 24-262-1993(T) untuk menggantungkan prosiding lelongan awam dibawahnya maka suatu tarikh lelongan awam yang lain hendaklah ditetapkan.

Tambahan pula sesebuah mahkamah berbidang kuasa setaraf tidak boleh menyekat apa-apa prosiding di bawah suatu tindakan melalui suatu perintah yang dibuat di bawah tindakan yang lain. Hanya perintah yang dibuat di bawah tindakan itu sendiri atau oleh mahkamah lebih tinggi boleh menyekat prosiding tersebut.

Memandangkan penangguhan yang dibuat tersebut tanpa sebab maka sila tuan tetapkan suatu tarikh lelongan yang lain dalam tempoh yang terdekat.

Yang benar

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(WY Chan & Roy)

sk
Ketua Pendaftar
Mahkamah Persekutuan
Kuala Lumpur.

(b) A letter dated 16 December 1997 from Messrs WY Chan & Roy to the Chief Registrar of the Federal Court, Kuala Lumpur.

16 Disember 1997

Ketua Pendaftar
Mahkamah Persekutuan
Kuala Lumpur.

Tuan

Saman Pemula No 24–262–1993 (T)
Lim Joo Thong v Koperasi Serbaguna Taiping Barat Bhd

We have copied the enclosed letter to you for your kind attention, if required. Brief particulars of the relevant events are set out below:

(1) In SP 24–262–93 the plaintiff obtained judgment dated 3 June 1994 against the defendant for RM2,372,256.45 entered in terms of an arbitration award under s 27 Arbitration Act 1952. The defendant had opposed the application and written grounds for the judgment were given by his Lordship, Dato' Abdul Malik bin Haji Ishak (reported in [1994] 3 CLJ 341).

(2) The plaintiff proceeded with first execution proceedings on the said judgment dated 3 June 1994 but by an order dated 5 December 1994 his Lordship Dato' Zulkefli bin Ahmad Makinudin stayed execution proceedings pending the defendant's appeal against the said judgment dated 3 June 1994.

(3) On 26 June 1995, the Supreme Court dismissed the defendant's application to file the record of appeal out of time and also dismissed the appeal against the said judgment dated 3 June 1994.

(4) The plaintiff then completed the first execution proceedings for part of the judgment sum and proceeded with second execution proceedings for the balance. The auction of the defendant's land was fixed on 18 December 1995 but on an ex parte application his Lordship Dato' Zulkefli stayed the auction pending the hearing of an alleged counterclaim by the defendant.

(5) The plaintiff appealed to the Court of Appeal against the stay order by his Lordship Dato' Zulkefli and on 27 March 1997 the appeal was allowed with the consequence that execution proceedings on the said judgment dated 3 June 1994 could continue.

(6) Another auction dated was fixed on 9 December 1997 for the sale of the defendant's land but the defendant (now as plaintiff) filed another SP 24–165–1997 for declarations together with an ex parte application for a stay. His Lordship Dato Zulkefli instructed that the auction fixed for 10 am in the SP 24–262–1993 be put on hold so that the ex parte application in the new auction (SP 24–165–1997) could be heard by his Lordship.

(7) On 10 December 1997, his Lordship Dato' Zulkefli made an ex parte order in SP 24–165–1997 staying all auction proceedings on 9 December 1997 for certain scheduled lands. (No reference was made to SP 24–162–1993). The auction in SP 24-262-1993 was however cancelled by the court.

His Lordship Dato' Zulkefli made two orders staying execution proceedings on the said judgment dated 3 June 1994 in SP 24–262–1993 which orders were both overturned as follows:

(1) 15 December 1994: Stay pending appeal against the said judgment dated 3 June 1994. The Supreme Court dismissed the appeal.

(2) 18 December 1995: Stay pending an alleged counterclaim. The Court of Appeal revoked the stay.

Now in the new action (SP 24–165–97) his Lordship Dato' Zulkefli has made another order dated 10 December 1997 which apparently has had the effect of staying execution proceedings on the said judgment dated 3 June 1994 in SP 24–262–93. That is to say another action now controls the earlier action in which final judgment has not been expunged. There is no stay in SP 24–262–1993.

Yours faithfully,

Sgd (WYChan & Roy)

cc

(1) Timbalan Pendaftar/Penolong Kanan Pendaftar Mahkamah Tinggi 34000 Taiping

(2) Client

(c) An undated letter from the defendant to YAA Ketua Hakim Negara, Mahkamah Persekutuan, Bangunan Sultan Abdul Samad, Jalan Raja, 50506 Kuala Lumpur.

YAA Ketua Hakim Negara
Mahkamah Persekutuan
Bangunan Sultan Abdul Samad
Jalan Raja
50506 Kuala Lumpur

Yang Amat Arif,

Re: Saman Pemula No 24–262–1993 (T)
Lim Joo Thong v Koperasi Serbaguna Taiping Barat Bhd

With reference to the abovementioned I am in receipt of the letter from Mahkamah Tinggi, Taiping dated 16 December 1997 (Lampiran A) from my solicitors M/s WY Chan & Roy. The said letter is in reply to the letter written by my solicitors to the Timbalan Pendaftar/Penolong Kanan Pendaftar dated 16 December 1997 (Lampiran B).

I am writing this letter to your Lordship to seek for advice because I honestly do not know what to do in view of the fact that I had obtained judgment dated 3 June 1994 (Lampiran C) for my claim against Koperasi Serbaguna Taiping Barat Bhd for works done under Building Contract dated 29 February 1984.

On 5 December 1994 his Lordship Dato' Zulkefli bin Ahmad Makinudin granted first stay of execution of the said judgment dated 3 June 1994 pending appeal in Supreme Court despite of the fact that there was no appeal at the material time because no record of appeal was filed to the Supreme Court.

The said judgment was subsequently appealed to the then Supreme Court by the defendant in 1994. On 26 June 1995, the Supreme Court under

the panel of his Lordship YAA Tan Sri Dato Haji Mohd Eusoff bin Chin, YAA Tan Sri Dato' Haji Lamin Bin Haji Mohd. Yunus, YAA Dato Mohd Dzaiddin Bin Haji Abdullah had dismissed the appeal against the said judgment dated 3 June 1994. The said Supreme Court order is enclosed herewith (Lampiran D).

However a second stay of execution was granted in favour of the defendant by the same judge his Lordship Dato' Zulkefli bin Ahmad Makinudin on the auction day itself dated 18 December 1995 when I was trying to recover the balance judgment sum.

I instructed my solicitor to appeal against the said decision to the Court of Appeal. And on 27 March 1997, my appeal was allowed with cost against the defendant by the panel of his Lordships YA Dato' Siti Norma bte Yaakob, YA Dato Mahadev Shankar, YA Tuan Denis Ong Jiew Fook. The said order is enclosed herewith (Lampiran E).

After waiting for seven long years and following every procedures in accordance with the provision of law as advised by my solicitors, I thought that justice is finally done when an order for sale was granted by his Lordship Dato' Zulkefli bin Ahmad Makinudin for auction fixed on 9 December 1997 by the Registrar of Taiping High Court.

To my astonishment, on the auction day ie 9 December 1997 at about 11.30am, I was told that the said auction was postponed to the next day because his Lordship Dato' Zulkefli bin Ahmad Makinudin wanted to hear an ex parte application of a fresh SP 24–165–1997 (T) at 2.15 pm filed on the same morning by the defendant solicitors M/s Bachan & Kartar.

The said auction was fixed at 10 am at the vicinity of Taiping High Court, and bidders had been waiting before 10 am, registration of bidders had been carried out by the court official. My doubt is can the registrar go against the terms and conditions as in the proclamation of sales given under the order for sale by his Lordship to postpone the auction.

Once again, for the third time, the said auction was stayed by an ex parte order made by the Lordship Dato' Zulkefli bin Ahmad Makinudin on 10 December 1997 in the SP 24–165–1997 (T).

My solicitors advised me that such course is not possible, as a new action that has no connection whatsoever with SP 24–262–1993(T) in which final judgment has been obtained cannot control or interfere into the execution of the said judgment. But what is said to be impossible is made possible again by his Lordship Dato' Zulkefli bin Ahmad Makinudin. And my solicitor admits to me that as a solicitor in charge he himself does not know what else to do.

I am utterly confused now and I have been pondering over and over again on these questions.

(1) Can the decisions made by the Supreme Court and the Court of Appeal be overuled by the court below?

(2) Is there justice after all?

(3) If there are first, second and third stays against the execution of a final judgment, what can guarantee that there will not be a fourth and fifth stay?

I would be grateful if your Lordship could advice me what is the next step I should take in order that my right would not be jeopadized. And I desire to obey the law of the country.

I await your decision.

Thank you.

Yours faithfully,
sgd
Lim Joo Thong

cc Senior Partners
(WY Chan & Roy (Your Ref: FH/RW/5314-26)

(15) At the hearing date on 17 February 1998, En Gurbachan Singh, the learned counsel for the plaintiff, when asked by this court whether he had received any of these three letters confirmed that as solicitors for the plaintiff he did not receive any of these three letters from Messrs WY Chan & Roy and the defendant Lim Joo Thong. In fact, none of these three letters stated that copies of the said letters are extended to his firm. The court then sought the views of both counsel for the plaintiff and counsel for the defendant the question of whether notwithstanding the existence of the three letters both parties wish this court to continue hearing the case. En Gurbachan Singh informed the court that he would like this court to proceed and hear the case and he shall later take instructions from his client the plaintiff as regards what course of action the plaintiff would take on the said three letters. En Faizul Hilmy counsel for the defendant replied that he wished this case to be heard and proceeded forthwith. The court then proceed to hear the present case and the case was adjourned for continued hearing on 6 April 1998.

(16) During the period of adjournment of the present case this court made an indepth study of the contents of said three letters written by the defendant and his solicitors Messrs WY Chan & Roy and came to a finding that the contents of the said three letters when read together contained elements which constituted an act of contempt of this court as follows:

(a) Not respecting the decision of the ex parte order made by the court dated 10 December 1997 given to the plaintiff wherein Messrs WY Chan & Roy as solicitors for the defendant Lim Joo Thong had questioned the propriety of the said decision given by the court and had also requested the deputy registrar of the High Court Taiping to conduct again the public auction which had been stayed by fixing a new date. This action is a clear defiance of the ex parte order dated 10 December 1997 which was then still in force until the hearing and the disposal of the case inter partes by this court.

(b) Expression of dissatisfaction over the decisions given by this court in the present case and in other previous proceedings involving the plaintiff and the defendant. Messrs WY Chan & Roy as solicitors for the defendant had expressed their views in the said two letters written by them on issues which they should have argued before the court at the inter partes hearing. This act

tantamounted to prejudging the issues to be decided by the court and therefore subjudice. A

(c) By their action and conduct Messrs WY Chan & Roy and the defendant Lim Joo Thong had shown that they had ignored the judge of the High Court of Taiping who tried their case and also the plaintiff and their counsel because none of the said three letters written by them were extended to the trial judge and the plaintiffs as well as their counsel. The views expressed in the said three letters in respect of the case were only views representing that of the defendant only. B

(17) The court decided to issue show cause letters to Messrs WY Chan & Roy as solicitors for the defendant and the defendant as to why they should not be cited for contempt of court for writing the said three letters. The deputy registrar of the High Court of Taiping on the direction of this court on 17 March 1998 issued show cause letters to Messrs WY Chan & Roy and the defendant Lim Joo Thong. The said show cause letters issued to both Messrs WY Chan & Roy and the defendant is reproduced in full as follows: C D

17 Mac 1998

(1) Tetuan WY Chan & Roy
Peguambela dan Peguamcara
No 77, Jalan Sultan Abdul Jalil
30300 Ipoh
Perak Darul Ridzuan. E

(2) En Lim Joo Thong
No 139, Jalan Larut
Taman Lake View
34000Taiping. F

Tetuan/tuan,

Saman Pemula No 24–165–97 (T)

Saya telah diarah oleh Yang Arif Hakim Mahkamah Tinggi Taiping untuk membawa kepada perhatian pihak tetuan/tuan tiga pucuk surat yang masing-masing ditulis oleh pihak tetuan dan anakguam tetuan Lim Joo Thong berhubung dengan kes tersebut di atas seperti berikut: G

(1) Surat bertarikh 16hb Disember 1997 daripada tetuan WY Chan & Roy kepada Ketua Pendaftar, Mahkamah Persekutuan Kuala Lumpur.

(2) Surat bertarikh 16hb Disember 1997 daripada tetuan WY Chan & Roy kepada Timbalan Pendaftar, Mahkamah Tinggi Taiping. H

(3) Surat tidak bertarikh daripada Lim Joo Thong kepada Yang Amat Arif Ketua Hakim Negara Malaysia. (Bersama-sama ini disertakan salinan surat-surat berkenaan).

Kes tersebut di atas telah mula didengar oleh Mahkamah Tinggi Taiping pada 9 Disember 1997 secara ex parte atas permohonan saman dalam kamar pihak plaintif, Koperasi Serbaguna Taiping Barat Bhd. Perdengaran inter partes permohonan plaintiff tersebut serta permohonan pihak defendan Lim Joo Thong untuk mengenepikan perintah ex parte Mahkamah Tinggi ini bertarikh I

10 Disember 1997 dan untuk membatalkan tindakan plaintif adalah masih dalam peringkat perbicaraan. Kes ini telah ditangguh untuk sambung bicara pada 27 Mac 1998.

Yang Arif Hakim Mahkamah Tinggi Taiping berpendapat isi kandungan surat-surat tersebut jika dibaca bersama-sama mempunyai unsur-unsur yang menghina kemuliaan mahkamah ini seperti berikut:

(1) tidak menghormati keputusan perintah ex parte Mahkamah Tinggi bertarikh 10 Disember 1997 yang diberi kepada plaintif di mana pihak tetuan sebagai peguam defendan Lim Joo Thong telah mempertikaikan kesahihan keputusan yang diberi oleh mahkamah tersebut dan pihak tetuan juga telah meminta Timbalan Pendaftar Mahkamah Tinggi Taiping menjalankan semula lelongan awam dengan menetapkan tarikh lelongan awam yang baru. Tindakan ini adalah bertentangan dengan perintah ex parte yang masih berkuatkuasa yang telah menangguh prosiding lelongan awam buat sementara sehingga permohonan inter partes selesai didengar atau perintah ex parte tersebut diketepikan oleh mahkamah.

(2) meluahkan perasaan tidak puas hati pihak tetuan dan anakguam tetuan terhadap keputusan yang diberi oleh mahkamah ini dalam prosiding ini dan prosiding-prosiding sebelum ini yang melibatkan kedua-dua belah pihak. Pihak tetuan juga selaku peguam defendan telah memberi pandangan awal atas isu-isu yang perlu diputuskan dalam kes tersebut di atas dan secara tidak langsung memutuskan sendiri isu-isu yang perlu dibicarakan (pre-judging). Tindakan ini boleh dianggap sebagai sub-judice.

(3) perbuatan atau tindak-tanduk tetuan dan anakguam tetuan yang telah membelakangkan Yang Arif Hakim Mahkamah Tinggi Taiping dan juga pihak plaintif serta peguam mereka kerana tidak ada langsung salinan surat-surat tersebut ditujukan kepada Yang Arif Hakim dan pihak plaintif serta peguamnya. Pandangan yang telah diberi melalui surat-surat tersebut adalah pandangan dari sudut suatu pihak defendan sahaja.

Atas alasan-alasan yang dinyatakan di atas saya telah diarah oleh Yang Arif Hakim Mahkamah Tinggi, Taiping supaya pihak tetuan dan anakguam tetuan Lim Joo Thong hadir di Mahkamah Tinggi Taiping yang akan bersidang di Bangunan Mahkamah di Kuala Kangsar pada 27 Mac 1998 jam 9.30 pagi untuk tunjuk sebab kenapa suatu tindakan menghina mahkamah yang mulia ini tidak boleh diambil terhadap tetuan dan anakguam tetuan Lim Joo Thong.

Sekian. Terima kasih.

Saya yang menurut perintah,

tt
(AHMAD KAMAR BIN JAMALUDIN)
Timbalan Pendaftar
Mahkamah Tinggi
Taiping, Perak.

sk:

(1) Tetuan Bachan & Kartar
Peguambela dan Peguamcara
No 31-A, Tingkat Satu
Jalan Dato' Maharajalela
30000 Ipoh.

(2) Setiausaha
Koperasi Serbaguna Taiping Barat Bhd
No 273, Tingkat Satu
Jln Pakcik Ahmad
Taman Bersatu
34000Taiping.

On 6 April 1998, the date fixed for the continued hearing of the inter partesinter partes application of the plaintiff in encl 4 and the application of the defendant to set aside the ex parte order dated 10 December 1997 in encl 11 the court informed the parties present that the court would first proceed to conduct the contempt proceeding against the alleged contemnors based on the show cause letters dated 17 March 1998. This procedure is consistent with the rule that a party in contempt cannot be heard until he has purged his contempt. This rule extends to the present case where this court had demonstrated prima facie by virtue of the show cause letter dated 17 March 1998 that the alleged contemnors were in contempt of the court.

En Romesh Roy, Cik Millie Chan Wai Yen, En Chong Wei Lung and En Faizul Himly and all of them being partners of the firm of solicitors appeared for the firm Messrs WY Chan & Roy to answer and to give explanation to the said show cause letter in the contempt proceeding. The defendant Lim Joo Thong was also present for the purpose of contempt proceeding instituted against him. Messrs WY Chan & Roy was represented in the contempt proceeding by learned counsel YM Raja Aziz Addruze and the defendant by learned counsel En Zainur Zakaria.

At the outset of the contempt proceeding I informed the alleged contemnors and their learned counsels that the court was proceeding with the contempt proceeding in a summary manner on the basis that the court found prima facie the act and conduct of the alleged contemnors based on the contents of the said three letters constitute contempt exfacie or contempt in the face of the court. However YM Raja Aziz for Messrs WY Chan & Roy sought the court's indulgence to make a submission on the point of procedure to be adopted in this contempt proceeding. YM Raja Aziz submitted that in so far as the said letters written by Messrs WY Chan & Roy on 16 December 1997 are concerned they were written not with regard to something occuring in the face of the court. The learned counsel contended that the position in law is unless something happened in the face of the court such as insulting remarks made to the bench or counsel while addressing the court concealed documents then the court ought not to take contempt proceeding in a summary manner. He further contended that there is an avenue opened to this court whereby the proper procedure to be adopted would be for the honourable Attorney General to bring proceeding against the alleged contemnors. A complain could be made to the Attorney General on these three letters. With respect I could not agree with this point of contention of YM Raja Aziz that this court should not proceed in a summary manner on the contempt proceeding instituted against the alleged contemnors. I am of the view that the act and conduct of the alleged

A contemnors based on the letters written by them in respect of matters arising from this case constituted a contempt in the face of the court. It is a contempt in the cognizance of the court as such acts and conduct took place during a pending proceeding and when the case had not been finally disposed off by the court. Hence it is contempt which the court can punish on its own motion.

B

I am also of the view that the circumstances and categories of facts which may arise and which may constitute contempt in the face of the court in a particular case are never closed. Contempt in the face of the court may arise from any act, any slander, any contemptuous utterance and any act of disobedience to a court order. Any of these acts in varying degrees that C affects the administration of justice or may impede the fair trial of subjudice matters, whether for the time being pending in any court can be deemed to be contempt in the face of the court.

It has been said that there is no rigid formula as to what constitutes contempt in the face of the court. Lord Tucker on this point in the case of *Joseph Orakwue Izuora v R* [1953] AC 327 at p 336 had this to say:

D

> It is not possible to particularize the acts which can or cannot constitute contempt in the face of the court.

In any event it is my view that in order to constitute this type of contempt, the words or acts must interfere or tend to interfere with the course of E justice. I am also of the view to constitute contempt in the face of the court it appears to be unnecessary that the act of contempt should take place wholly, or in part in a court room itself nor does it seem to be necessary that all the circumstances of the contempt should be within the personal knowledge of the judicial officer dealing with the contempt. It is settled law that the court will not readily as a matter of course exercise their powers of F summary punishment for contempt in the face of the court and it has been reiterated time and again that this power should be used sparingly. However this must not be taken to mean that in a case which a strong unrebutted case exists, the court will invariably decline to exercise jurisdiction and mete outjustice accordingly. This power is emphatic and imperative. Abbot CJ in *R v Davison* (1821) 4B & Ald 329 at p 333 on this point, inter alia, said:

G

> It is utterly impossible that the law can be [properly] administered if those who are charged with the duty of administering it, have no power to prevent instances of indecorum from occuring in their own presence. That power is vested in the judges not for their personal protection but for that of the public. And a judge will depart from his bounden duty if he forbears to use it when occasion arises which call for its existence.

H

As regards the power of the court to punish any contempt of itself such power is enshrined in art 126 of the Federal Constitution and s 13 of the Courts of Judicature Act 1964, both of which provide that 'The Federal Court, Court of Appeal or High Court shall have the power to punish any contempt of itself.' Article 10(2) of the Federal Constitution provides that I Parliament may impose any restriction by law relating to contempt of court. So far no special law on contempt of court had been enacted under the said

art 10(2). The above statutory provisions have not interfered with the growth and development of the common law position in relation to contempt of court. In fact, the common law provision under s 3 of the Civil Law Act 1956 is preserved. In the case of *Attorney General, Malaysia v Manjeet Singh Dhillon* [1991] MLJ 167, the Supreme Court held that the English Common law principle of contempt of court is applicable in Malaysia by virtue of s 5 of the Civil Law Act 1956. Therefore any act done or writing published which is calculated to bring a court or a judge of the court into contempt or to lower its authority is contempt of court. Furthermore it was held in the above mentioned case that when applying the law of contempt in Malaysia, the court will not lose sight of the local conditions and for that reason our courts are at liberty to take a stricter views of matters pertaining to the dignity of the court. In this context I am of the view that it is a matter for our courts to consider having regard to our own conditions and circumstances and any view taken by foreign jurisdictions in this connection can only provide persuasive authority.

In the circumstances of this case notwithstanding the objection made by YM Raja Aziz on the proper procedure to be adopted by this court to institute this contempt proceeding, I am of the view that what is of paramount importance is whether in the proceeding instituted the alleged contemnors had been given the opportunity of being heard before they are punished and that the elements of contempt were fully set out for them to show cause. In the case of *PP v Seeralan* [1985] 2 MLJ 30, the Federal Court held, inter alia, that as the records clearly showed that the elements of contempt were fully set out and the respondent was asked to show cause, there was therefore no failure on the part of the trial court to give the respondent an opportunity to be heard before he was punished. It is my finding that this court had the jurisdiction to proceed to institute the contempt proceeding against the alleged contemnors based on the show cause letter dated 17 March 1998 sent out to the alleged contemnors. The court had the jurisdiction by virtue of the fact that the said show cause letter dated 17 March 1998 had instituted three charges and that the elements of contempt were fully set out and the court had decided that both Messrs WY Chan & Roy and the defendant Lim Joo Thong were to show cause. The alleged contemnors should thereafter give explanations to the court and that to my mind would tantamount to show cause. It is my view that the alleged contemnors may choose to give explanations by way of evidence on oath and be cross-examined. They can even give an unsworn statement or alternatively remained silent and make submission in law.

After I had made a ruling that this court would proceed with the contempt proceeding based on the show cause letter dated 17 March 1998 against the alleged contemnors En Romesh Roy on behalf of Messrs WY Chan & Roy decided to make an unsworn statement to this court to give their explanations. The following is the verbatim record of the explanation given by En Romesh Roy in the said contempt proceedings:

> I am a partner of Messrs WY Chan & Roy. I am in charge of the Ipoh office. On 16 December 1997, En Faizul Hilmy visited the Ipoh office to brief me on the details of the ex parte order of stay made by this court on 10 December

1997. In the proceedings which was began by our client as the plaintiff is SP 24-262-93 we are the solicitors on record for the plaintiff in that case and En Faizul has been handling this matter.

The stay of the auction fixed on 9 December 1997 was obtained in a separate proceeding under SP 24-165-97. In the briefings it transpired that the separate proceeding began by the defendant on 9 December 1997 as plaintiff did not specifically require a stay of the judgment against them in the earlier proceeding in SP 24-262-93.

There was no reference to these earlier proceeding nor was there any reference to the judgment therein. Our view was that the order obtained in a separate proceeding did not specifically apply to the earlier proceeding.

We called the Senior Assistant Registrar Tuan Syed over the phone to express our view. The SAR was not quite sure of the position but asked us to write. So we wrote a letter to the Deputy Registrar and we receive a reply immediately from the Deputy Registrar pertaining to our view in our letter dated 16 December 1997. The intention of writing the letter to the Chief Registrar of the Federal Court was in case that the Deputy Registrar wanted to discuss the case with the Chief Registrar.

In writing these two letters there was no intention to offend this honourable court or to be disrespectful to the ex parte order this court had made on 10 December 1997. I honestly believe the interpretation we took was correct.

As for the undated letter from the defendant Lim Joo Thong that letter was not written by us nor did we assist or participate in the writings thereof.

After En Romesh Roy had given his explanations I informed En Romesh Roy that I wished to put some questions from the court for him to answer. However YM Raja Aziz learned counsel for Messrs WY Chan & Roy informed the court that he would like to put his objection on record that this honourable court should not put questions to the alleged contemnors after he had given his explanation. I however made a ruling that this court can put questions to the alleged contemnors after he had given his explanation. I am of the view that although in a criminal case when an accused person makes an unsworn statement neither the court nor the counsels can question him, in a contempt proceeding initiated by the court on its own motion and to determine at the end of the day whether the explanation given ought to be accepted or rejected the court must and can question the alleged contemnors in order to satisfy itself whether the explanation is made in good faith or malice and to determine whether to accept or to reject the explanations given.

I then proceeded to put questions from the court to En Romesh Roy as follows:

Question (1) — When your firm Messrs WY Chan & Roy wrote these two letters dated 16 December 1997 (exh P1 dan P2) was your firm fully aware of the fact that the case in question in SP 24-165-97 is still pending to be heard inter partes by the judge of the High Court of Taiping on a date agreed by both parties on 17 February 1998.

Answer — I was aware of the fact that when we wrote these two letters dated 16 December 1997 this case in question in SP 24–165–97 is still pending to be heard inter partes on 17 February 1998 a date agreed by both parties.

When we wrote these two letters we wrote in relation to the proceeding in SP 24–262–93. Our views expressed were merely whether the order made by the later proceeding stays execution of the judgment in SP 24–262–93.

Question (2) — Why was it that there were no copies of the letters dated 16 December 1997 sent to the Chief Registrar of the Federal Court (exh P2) and to the Deputy Registrar of the High Court Taiping (exh P1) extended to the plaintiff and counsel for the plaintiff in SP No 24–165–97.

Answer — It is not necessary to extend a copy of the said two letters dated 16 December 1997 to the defendant and their counsel in the execution proceedings under SP 24–262–93.

Question (3) — Have you ever read the supporting affidavit of the plaintiff's application under SP 24–165–97 for the stay of the auction proceedings.

Answer — I have not read the supporting affidavit of the plaintiffs application in SP No 24–165–97.

I was only informed of the ex parte order and no ex parte order had been served on me either.

Question (4) — Are your firm of solicitors aware of the fact that before the judge of the High Court of Taiping made the ex parte order dated 10 December 1997, the trial judge had invited the counsel for the defendant En Faizul Hilmy to submit to the court on points which may assist the court in deciding whether to grant the said ex parte order or not.

Answer — At that point of time when we wrote these two letters we were not aware that before the trial judge made that ex parte order he had invited counsel for the defendant En Faizul Hilmy to submit at the invitation of the court on points which may assist the court in making that order.

At that time on 9 December 1997 and 10 December 1997, we were not solicitors on record for the defendant in this present suit.

There is no intention at all by our firm of solicitors to question the decision of this honourable court when it granted the ex parte order dated 10 December 1997.

The defendant, Lim Joo Thong gave his explanation in Hokkien in an unsworn statement and recorded as follows:

Nama saya adalah Lim Joo Thong dan umur saya 50 tahun. Alamat saya sekarang ialah 139, Jalan Larut, Taman Lake View Taiping.

Surat tidak bertarikh saya kepada YAA Ketua Hakim Negara ditulis oleh pengurus saya bernama Lien Choon Hwa. Lien Choon Hwa sekarang berada di mahkamah ini. Saya hanya menandatangani surat tersebut. Ini sahaja penjelasan saya.

After the defendant had given his explanation to the said show cause letter the court put the following questions for him to answer:

Question (1) — Apa yang hendak awak katakan berkait dengan surat yang tidak bertarikh ini kepada YAA Ketua Hakim Negara.

Answer — Surat tidak bertarikh tersebut kepada YAA Ketua Hakim Negara ditulis oleh pengurus saya Lien Choon Hwa. Saya hanya menandatangani surat tersebut. Sebelum pengurus saya Lien Choon Hwa menyediakan surat tersebut beliau ada memberitahu kepada saya bahawa beliau akan menulis surat kepada Ketua Hakim Negara. Ini kerana saya menyoal beliau

kenapa kes saya ditangguh-tangguhkan. Beliau adalah pengurus saya yang mengendalikan kes ini. Itulah penjelasan dari saya.

Question (2) — What is the purpose or intention of writing this undated letter (exh P3) to YAA Ketua Hakim Negara.

Answer — My purpose was to get an early date of hearing of my case.

Question (3) — In writing this undated letter of complaint to YAA Ketua Hakim Negara did you get the advice from the firm of solicitors of Messrs WY Chan & Roy.

Answer — The firm of solicitors of WY Chan & Roy are not responsible at all for the contents as stated in the said undated letter to YAA Ketua Hakim Negara.

Question (4) — A reference was made to the two letters dated 16 December 1997 in your undated letter to YAA Ketua Hakim Negara. Are you aware of the contents of the said two letters.

Answer — I was told by my manager of the contents of the two letters dated 16 December 1997 from Messrs WY Chan & Roy to the Chief Registrar of the Federal Court and to Deputy Registrar of the High Court Taiping. The contents of the said two letters were explained to me by my manager but I do not understand.

Question (5) — Did you refer all those matters mentioned in your undated letter to YAA Ketua Hakim Negara with the firm of solicitors Messrs WY Chan & Roy.

Answer — I did not refer all these matters raised in my undated letter to YAA Ketua Hakim Negara with my solicitors from Messrs WY Chan & Roy because my manager was the person who deals with the counsel.

Question (6) — In your undated letter to YAA Ketua Hakim Negara you have mentioned among other things this statement: 'But what is said to be impossible is made possible by his lordship Dato' Zulkefli bin Ahmad Makinudin. And my solicitor admits to me that as a solicitor in charge he himself does not know what else to do!' What do you mean by that quoted statement.

Answer — I was told by my manager that the counsel acting for me could not do anything else as regards this ex parte order made by this honourable court.

Question (7) — Do you know that this case will be heard inter partes and that the ex parte order made by the court can be set aside after hearing both the parties.

Answer — I do not know that this case will be heard inter partes and that the ex parte order made by the court can be set aside after hearing both the parties.

I did not know that the ex parte order can be set aside after hearing inter partes because my lawyer did not tell me. My manager deals with my counsel.

Question (8) — In your undated letter to YAA Ketua Hakim Negara you have also mentioned this statement:

> 'I am utterly confused now and I have been pondering over and over again on these questions.
>
> (1) Can the decisions made by the Supreme Court and the Court of Appeal be overruled by the court below.
>
> (2) Is there justice after all.'

Why did you say this?

Answer — My manager wrote this undated letter and he explained to me but I did not understand.

Question (9) — By writing this undated letter to YAA Ketua Hakim Negara are you showing that you have no confidence in this court to adjudicate your case in this SP 24–165–97.

Answer — It is not my intention by writing this undated letter to YAA Ketua Hakim Negara that I am showing no confidence for this honourable Court to adjudicate my case in this SP 24–165–97.

Question (10) — When you wrote this undated letter to YAA Ketua Hakim Negara were you aware of the fact that your counsel from Messrs WY Chan & Roy had already filed an application to set aside the ex parte order dated 10 December 1997 as well as to strike out the plaintiff's action in SP 24–165–97.

Answer — When I signed this undated letter to YAA Ketua Hakim Negara, I was aware of the fact that at that time my counsel from Messrs WY Chan & Roy had already filed in an application to set aside the said ex parte order and to strike out the plaintiff's action in SP 24-165-97.

Question (11) — You have also stated in your undated letter to YAA Ketua Hakim Negara as follows:

> 'I would be grateful if your lordships could advice me what is the next step I should take in order that my right would not be jeopadized. And I desire to obey the law of the country.'

What do you mean by this statement?

Answer — My manager told me that this letter to YAA Ketua Hakim Negara is to help me in this matter.

I am not clear about this case even though my solicitors have filed an application to set aside the said ex parte order dated 10 December 1997. My manager knows better about this case.

Having heard and studied the explanations given by En Romesh Roy for and on behalf of Messrs WY Chan & Roy and the defendant Lim Joo Thong, it is my finding that both the alleged contemnors had failed to give a sufficient explanation to the said show cause letter. Therefore I find both Messrs WY Chan & Roy and the defendant Lim Joo Thong to be guilty of contempt of this honourable court.

On the explanation given by En Romesh Roy for Messrs WY Chan & Roy as to the fact that they were not the solicitors on record for the defendant when this court heard the application of the plaintiff in encl 4 for stay of the auction proceeding on 9 December 1997 and 10 December 1997, I find that this explanation is not true. Based on a letter dated 9 December 1997 from Messrs Bachan & Kartar as solicitors for the plaintiff to Messrs WY Chan & Roy as solicitors for the defendant, I find all the cause papers for the hearing of the plaintiff application in encl 4 had been duly served on the defendant's solicitors Messrs WY Chan & Roy (see the letter dated 9 December 1997 marked as exh P7). The said letter dated 9 December 1997 (exh P7) as produced had on it the endorsement of

receipt by the defendants solicitors Messrs WY Chan & Roy. Pursuant to the service of the cause papers which were accepted and never rejected En Faizul Hilmy from Messrs WY Chan & Roy appeared on 9 December 1997 and 10 December 1997 for the defendant and opposed the ex parte application of the plaintiff. Pursuant to the service of the cause papers on 9 December 1997 Messrs WY Chan & Roy also entered a conditional appearance on 15 December 1997 (see the memorandum of conditional appearance filed on 15 December 1997 by Messrs WY Chan & Roy marked as exh P8). Exhibit P8 was served on the solicitors for the plaintiff on 16 December 1997 on the same day as the two letters dated 16 December 1997 of exhs P1 and P2 were written. Therefore based on the above mentioned documents produced as exhs P7 and P8 it is a fact which cannot be denied that when exhs P1 and P2 were written Messrs WY Chan & Roy were the solicitors for the defendant Lim Joo Thong.

On the contention of Messrs WY Chan & Roy as stated in their letter dated 16 December 1997 to the deputy registrar of the High Court of Taiping and as in the explanation given by En Romesh Roy before this court that the view taken by them was that a stay of the auction fixed on 9 December 1997 was wrongly obtained by the plaintiff in a separate proceeding under the present action SP 24–165–97 and that the plaintiff had not specifically required a stay of the judgment against them in the earlier proceeding in SP 24–262–93, I am of the the view that this is an issue which ought to be argued and decided by this honourable court in the application that was heard ex parte on 9 December 1997 and decided on 10 December 1997 and fixed for inter partes hearing on 17 February 98. I am of the view that any comment or views expressed on a pending legal proceeding as in this case which purports to prejudge the issues which are to be tried by the court is intrinsically objectionable as being an usurpation of the proper function of the court. This it seems may be punished or restrained as a contempt irrespective of the effect or likely effect on the particular proceeding in question. In the present case Messrs WY Chan & Roy in their letter dated 16 December 1997 to the chief registrar of the Taiping High Court had not only prejudged the issues to be tried by the court but had thought it fit to direct the deputy registrar to fix a new auction date as soon as possible defying the order of stay made by this court on 10 December 1997.

On the explanation given by En Romesh Roy that the order of the stay of the auction dated 10 December 1997 obtained by the plaintiff made no reference to the earlier proceeding under SP 24–262–93 nor was there any reference to the judgment therein, I find that this contention is not true. The cause papers that were served on Messrs WY Chan & Roy on 9 December 1997 clearly showed without a shadow of doubt what was the purpose of the plaintiff's ex parte application in encl 4. In fact at para 8 of the supporting affidavit of the said ex parte application in encl 3 it had made specific reference to the previous proceeding as follows:

> 8 Seterusnya saya katakan bahawa melalui permohonan Saman Pemula No 24–262–1993(T), Mahkamah Tinggi Taiping pada 3 Jun 1994 telah

membenarkan permohonan defendan untuk perintah menguatkuasakan award yang dibuat oleh En WY Chin sebagai timbangtara yang memutuskan pertikaian di antara defendan dan plaintif. Dilampirkan di sini sesalinan perintah mahkamah bertarikh 3 June 1994 ditandakan sebagai eks 'WAS-8'.

It is my considered view that with all these averment in the affidavit in support of the plaintiff's application in encl 4 and all the relevant exhibits produced how can there be any doubt to the defendant and his solicitors as to which lands were intended for auction and for the application of the stay to be made.

It must also be noted that En Romesh Roy in his explanation before the court stated that he had a briefing with his colleague En Faizul Hilmy on 16 December 1997. There can be no doubt that En Faizul Hilmy would have briefed En Romesh Roy as to what was the order made by this court on 10 December 1997 when En Faizul Hilmy was present. I must state here that we are dealing with solicitors not laymen. In the face of the ex parte order given by this court to the plaintiff on 10 December 1997 what was the purpose of Messrs WY Chan & Roy writing the said letter dated 16 December 1997 to the Deputy Registrar of the High Court Taiping. Does the Deputy Registrar sit on appeal or on supervisory capacity. It is my view that if parties are in doubt about the order made by this court parties should come before the court to seek clarification. It is my finding that they did not do so because the said order was crystal clear. I hold that it is utter contempt for Messrs WY Chan & Roy as solicitors for the defendant to write the said letter dated 16 December 1997 to deputy registrar and arguing with the deputy registrar over the interpretation of the court's order dated 10 December 1997 and asking the deputy registrar to fix a new date of the auction which had been stayed on the 10 December 1997.

What then was the purpose of writing the letter dated 16 December 1997 to the Chief Registrar of the Federal Court. En Romesh Roy in his explanation before the court stated that the intention fo writing the said letter was in case that the Deputy Registrar wanted to discuss the case with the Chief Registrar. I find the explanation given is unsustainable. No where in the letters as in exhs P1 and P2 was there mentioned the fact that the purpose of writing these letters was so that the Deputy Registrar could discuss with the Chief Registrar of Federal Court. At any rate I do not find the necessity or justification for the Deputy Registrar to discuss the case with the Chief Registrar as the case relates to an ongoing legal proceedings before the trial judge.

On the question of mens rea or intention in a contempt proceeding I am of the view that it is not a relevant consideration. I am in agreement with the view adopted by Low Hop Bing J in the case of *Chandra Sri Ram v Murray Hiebert* [1997] 3 MLJ 240 wherein his Lordship, inter alia, held that in order to establish contempt of court as a result of publication, scandalizing the court or interfering with the course of justice intention or mens reas on the part of the alleged contemnor was not an essential ingredient. The test was whether the matter complained of had the tendency or was calculated to

interfere with the due administration of justice, not whether the perpetrator had intended that result. Contempt in the face of the court is an offence of strict liability in which intention on the part of the contemnor is irrelevant.

As regards the explanation given to this court by the defendant Lim Joo Thong I find that it is not much of an explanation at all. The defendant merely stated that the undated letter sent to the Chief Justice of the Federal Court as in exh P3 was not written by him but was written by his manager named Lien Choon Hwa. The defendant further stated that he merely signed the letter but was aware of the said letter being written to the Chief Justice and he had authorized his manager to do so as he was concerned of the long delay regarding his case. It must be held that since the defendant had authorized his manager to write the said letter he must be taken to have known the content of the said letter. A perusal of the contents of the letter written by the defendant in exh P3 clearly showed that it scandalized a judge in an on going legal proceedings. There is no justification at all for the defendant to have written this letter to the Chief Justice bearing in mind that at all time he had the benefit of advice of his solicitors and the learned counsel in charge of his case before this court. There is no truth whatsoever in the allegation made by the defendant against the judge in respect of his improper conduct or the protracted litigation between the plaintiff and the defendant as stated in the letter written to the Chief Justice.

On the sentence to be meted out I have to take into consideration of the fact that contempt in the face of the court that had been committed in this case is a serious offence. The conduct or act of any person found to be in contempt of court is a matter which at all costs should not be left unchecked and unpunished. Such act or conduct must not be allowed to reach a level that it may undermine the authority of the court and lower the dignity of the court in the eyes of the public. Any criticism levelled against the judge or the court's judgment must be within the limits of reasonable courtesy and good faith. The decision or order made by a court of competent jurisdiction must be accepted and respected until such decision or order is set aside. Whether such a decision or order was decided correctly or not it must be duly accepted and respected by all parties especially so when the order granted is of temporary in nature and given ex parte as in the present case. Any party who is a dissatisfied with such an order or decision may appeal against the said order or decision to the Court of Appeal. In passing sentence on the contemnors I am mindful of the fact that a judge having the discretionary power to punish summarily any contemnor for contempt in the face of the court must exercise that power sparingly and with utmost caution and only when the occasion arises which call for its existence. In the circumstances of the case I must state here that it is not my intention in instituting this contempt proceeding to fulfill my own personal pride or protection but that of the public with a view to protecting the dignity of the honourable court. Nevertheless after having heard the plea in mitigation made by the learned counsels of the respective contemnors and having considered the facts and the circumstances under which the said three letters were written together with the willingness of the contemnors to

unreservedly tender their apologies to this honourable court, I find that it is not inappropriate for me to pass a sentence of merely admonishing and discharging both the contemnors Messrs WY Chan & Roy and the defendant Lim Joo Thong. I hereby accordingly admonished and discharged both the contemnors.

Order accordingly.

Reported by Jafisah Jaafar